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The Albemarle Bar, XIII.

From 1850 to 1860 fourteen lawyers qualified to practice at the Albemarle Bar: R. T. W. Duke, William F. Gordon, Jr., James D. Jones, S. V. Southall, Burwell W. Snead, William M. Morris, John B. Gilmer, John S. Mosby, William H. Crank, John B. Peyton, Isaac A. Moon, George P. Hughes, M. L. Randolph and Charles Wood. Of these, two yet survive: the venerable William M. Morris, who is yet living in Florida, and Charles Wood, who is living near Ivy in this County. Neither of these gentlemen ever did very much practice in Albemarle or elsewhere and can hardly be counted as active practitioners.

Of the fourteen, four arose to more than ordinary prominence: i. e., Col. R. T. W. Duke, S. V. Southall, and James D. Jones, qualifying in 1850, and John S. Mosby, in 1855.

George P. Hughes resided all of his legal life in Goochland County, but was for one term Judge of the Albemarle Circuit. William F. Gordon, Jr., was a son of General William F. Gordon and at one time the partner of Judge William J. Robertson. That firm did an extensive practice. Mr. Gordon was Clerk of the Secession Convention in 1860-61. He removed to Louisa County, in which County he married a Miss Morris. He lived to an extreme old age; he was an orator of no mean ability.

James D. Jones was born in the County of Fluvanna, the son of Dr. Basil Jones of that County. He was educated at the University of Virginia and lived to a very old age. He was an excellent chancery lawyer, very modest and retiring and seldom appeared in Court; a gentleman of most lovable disposition, kindly and courteous, and exceedingly popular. From 1866 to 1875 he was in partnership with Col. R. T. W. Duke, and in 1870

Louis T. Hanckel became associated with the firm as Duke, Jones & Hanckel. This firm did a very large practice, being dissolved in 1874, when R. T. W. Duke, Jr., came to the bar, the firm of Duke & Duke being formed in January, 1875.

Mr. Jones represented the County in the General Assembly in 1870-71. He was Receiver of the Charlottesville National Bank and an excellent business man, later becoming President of the Bank of Albemarle. He retired from the bar in the early eighties and died in Washington City in 1912. He was a brother of Major Horace W. Jones, the gallant major in Pickett's Division, and for so many years one of the most distinguished and widely known educators in the State.

S. V. Southall was probably one of the ablest of the very able lawyers of his time. Born in Charlottesville in 1830, the son of the distinguished Valentine W. Southall, he was the great nephew of Patrick Henry. He attended the University of Virginia for four sessions and commenced the practice of law in Lynchburg, Virginia, soon, however, returning to his native city, where he commenced a long and brilliant career.

At the outbreak of the Civil War he entered the service of the Confederate States in the artillery branch of the Army and served during the entire war. For a while he was on the staff of General Armistead F. Long. After the close of the war he resumed the practice of law in Charlottesville, and soon after entered into partnership with Judge William J. Robertson, as stated above. He represented the County in the House of Delegates in 1870-71.

Mr. Southall was a most laborious, painstaking, accurate and able lawyer. His knowledge of cases and the doctrines laid down in them and his power to name the case and the doctrine therein announced was wonderful. He was a very powerful and forceful speaker, clear and direct; never attempting oratory, but using the very best English, he was listened to by courts and juries alike with respect and admiration. As a draughtsman he was hard to excel. His handwriting was so remarkably like that of Washington that a young lawyer not acquainted with Mr. Southall's writing found a document written in the early sixties in his handwriting and brought it out to exhibit it as one of

Washington's letters, wondering how it came to be in a file of chancery papers in Albemarle.

Judge Robertson's engagements as railroad attorney taking up most of his time, the partnership with Judge Robertson was dissolved and Mr. Southall enjoyed a large and lucrative practice up to the time of his retiring from the bar, which he did some ten years before his death. He died in Charlottesville, Virginia in 1913. He married Miss Emily Voss, who pre-deceased him. Three daughters and one son were the fruits of this marriage: Miss Mary, Martha, who intermarried with Rev. Joseph Dunn, and Dolly, who married Mr. Waters and died leaving a daughter, and S. V. Southall, Jr., a lawyer residing at Emporia, Virginia, and Attorney for the Commonwealth for Greensville County.*

William H. Crank was born and reared in Albemarle County, served in the Confederate Army, and after practicing a few years subsequent to the Civil War, moved to Houston, Texas. Here he became a prominent citizen and lawyer, accumulating a handsome estate and the respect and confidence of a large clientele. He was a gentleman of genial and enthusiastic nature, and his love for his native county and old friends never left him.

John B. Gilmer, a son of Governor Thomas W. Gilmer, was accidentally killed in Baltimore by a railroad train just before the Civil War. A young man of great promise, his early death left unfinished a life of many possibilities.

John S. Mosby was reared in Albemarle, though born in Powhatan. At the mere mention of his name what memories are aroused of dashing gallantry! Of the romance of skirmishes! Of the wonderful brilliancy of the partisan leader! One of the greatest soldiers of his peculiar kind that America ever produced—ranking with, if not superior to, Francis Marion, of Revolutionary fame.

He was a student at the University of Virginia in 1850-1-2, graduating in Greek, a language for which he entertained a great fondness to his dying day. He studied law under very peculiar circumstances: In an unfortunate altercation with a fellow student, Turpin by name, Mosby shot him. He was prosecuted

*Since this article was written this distinguished young lawyer died in Richmond in January of this year.

most vigorously by Judge William J. Robertson, who had just been elected Attorney for the Commonwealth and made a most earnest effort to convict. His speech in the case took up four hours. Mosby was convicted and given twelve months in jail and fined five hundred dollars—a sentence thought to be exceedingly severe, and after a short while Mosby was pardoned and the fine remitted by the Legislature. Whilst in prison Judge Robertson visited him and became so much interested in the young man he had done so much to convict that he lent him law books and paid him repeated visits. A friendship between the two men commenced then which only terminated with death, and after the Civil War Col. Mosby was often the honored guest of Judge Robertson at that wonderfully hospitable home on Park Street in Charlottesville.

Mosby felt his conviction very keenly but it left no bitterness. Upon his last visit here, to lecture at the University, he was the recipient of an ovation which touched him exceedingly. Among the treasured possessions of the writer is a letter written by Col. Mosby just after that visit, from which the writer cannot forbear copying an extract:

"May 10th, 1915.

"Dear Tom:

I got back here (Washington) all right and the first thing I said to my daughter was that I never before felt that I was a rich man, and that the reception in dear old Albemarle where I was raised was proof to me that I possess some things that gold cannot buy."

Col. Mosby only practiced a couple of years at the Albemarle Bar, moving to Bristol, Virginia, in 1855. There he remained until the outbreaking of the Civil War. Entering the Confederate Army as a private he soon began that wonderful career which has made, and will make, his name one of the famous in his native land. To attempt in a short article like this a biography of Mosby would be folly. Numerous books, many of them as entertaining as romances, have been written of the man and his famous command.

After the war he commenced the practice of the law in Warrenton; was appointed Consul to Hong Kong by President

Hayes; on his return from China he was General Counsel for the Southern Pacific Railroad at San Francisco for sixteen years. He was subsequently Assistant Attorney in the Department of Justice from 1904 to 1910, and continued to reside in that city until his death, May 30th, 1916.

As a lawyer Col. Mosby was a careful and safe counsellor. Few who saw him as the deliberate adviser and slow and cautious advocate could have realized the *elan* and dash of the great soldier. He spoke seldom, but always well. The writer loved the man too well to impartially weigh his abilities, but whatever he did he did thoroughly, conscientiously and well.

Burwell W. Snead was born in Fluvanna County in 1836. He graduated from the University of Virginia with the degree of B. L. in 1852 and practiced in Charlottesville until the Civil War, when he entered the Confederate States Army. He died in 1863 in his 27th year—too soon to indicate what his future career might have been.

John B. Peyton, a native of Albemarle, very soon after qualifying at the Albemarle Bar, moved to Charleston, W. Va., where he practiced law up to the date of his death some twelve years ago. He too was a Confederate soldier.

Meriwether Lewis Randolph was born in Albemarle—a member of the distinguished Randolph family, but he only practiced law a very short while, retiring to his plantation in this County where he died shortly after the Civil War. He was a Lieutenant in the Confederate Army.

The Late Judge E. W. Saunders.

The unexpected and sudden death of Hon. E. Saunders of the Supreme Court of Appeals came as a decided shock to the people of the Commonwealth which he had served with so much ability and zeal.

It was felt when Judge Saunders gave up the Circuit Court Bench for a seat in Congress, that the Judicary had lost more than Congress gained—and that without in any way reflecting upon Judge Saunders' great ability as a legislator; for he had gained eminence both as a legislator and as a Judge. Grad-

uating in law at the University of Virginia in 1882, he began the practice of his profession in Rocky Mount, Va., and soon took a prominent place at the bar of the County of Franklin and in the other Counties of the Fourth Judicial Circuit. In 1887 he was elected to the Virginia House of Delegates and was re-elected successively for seven terms. In 1899 he was elected Speaker of the House of Delegates and retained that position until elected Judge of the Seventh Judicial Circuit. On the resignation of Hon. C. A. Swanson, Judge Saunders was elected to Congress to succeed him and was re-elected to the Sixtieth, Sixty-First, Second, Third, Fourth, Fifth and Sixth Congresses, resigning in 1920, when elected to the Supreme Court of Appeals to succeed Judge Whittle. His judicial career upon our Supreme Tribunal extended therefore not quite two years but his opinions delivered during that time indicated that his election to the Supreme Bench added a jurist of marked ability to that body. Naturally of a judicial temperament of the highest character, calm, impartial and learned in the Law, his native Commonwealth had high hopes, well justified, of an eminent and useful career upon her highest tribunal. But Providence ordained otherwise and we can only add the verdict of his people, "Well done good and faithful servant."

Our New Judge of the Supreme Court of Appeals.

After a spirited though friendly contest in the Democratic Caucus of the General Assembly on the night of January 12th 1922, Judge Jesse L. West was the successful candidate. His opponents were Judge Frank L. Christian of Lynchburg, Judge Jos. W. Chinn, Jr., of Warsaw, Judge A. D. Dabney of Charlottesville and Judge E. J. Harvey of Danville.

Judge West was born in Sussex County, July 16, 1862, being a son of the late H. T. West, a large planter of that county.

He received his preliminary education at Suffolk Collegiate Institute, after which he entered the University of North Carolina, graduating in 1885, and entering the law school of the University of Virginia for the session of 1885-1886 to receive his legal training. He began his practice in 1887 at Waverly,

was elected county judge of Sussex in 1893, holding the position until the passage of the new Constitution in 1902. Since then he has served on the circuit bench of the Third Circuit, composed of the counties of Sussex, Prince George, Surry, Greensville and Brunswick, and the city of Hopewell. He has served continuously on the bench for twenty-nine years.

Eight years ago he was a candidate to succeed Judge Buchanan, at which time Judge Kelly, now president of the Court of Appeals, defeated him by six votes.

Judge West is in the prime of life, vigorous in health, and his career on the bench has been marked by qualities which have distinguished him. He has a wide acquaintance throughout the State, having held court under appointment in various sections of Virginia.

Judge West has been always a public-spirited citizen of his county, being actively identified with all civic and benevolent undertakings in his section of the State.

Judge West is a brother of Lieutenant Governor J. E. West. We predict for him a career of usefulness and with our congratulations express the hope that his judicial career in the higher tribunal may be as successful as that in the tribunal over which he has for so long a time presided.

Principals in Second Degree: Indictment.

Section 4764 of the Virginia Code of 1919 provides: "In case of every felony, every principal in the second degree and every accessory before the fact shall be punished as if he were principal in the first degree and every accessory after the fact shall be confined in jail not more than one year, and fined not exceeding five hundred dollars."

In Hatchett's Case, 75 Va. 932 it was held that *an accessory before the fact* could not be convicted under an indictment charging him as principal and from the reasoning of the opinion it must be seen that the same rule would apply to a principal in the second degree. It may well be asked: "Why?" Nearly every State in the Union has by statute provided that both principals in the second degree and accessories before the fact may be indicted as principals.

Why our State, which has provided that they may be *punished* as if principals in the first degree, should hold on to a technicality in the matter of indictment seems a strange thing to us. We have gone quite far it is true in correcting many of the absurdities regarding indictments which the old Common Law threw around the prisoner at a time when he was allowed no counsel. We have modified many of the long forms once deemed necessary. We have allowed amendments in non essentials at which an old time criminal lawyer would have been inexpressibly shocked. What is the difference between a principal in the first and second degree as far as the crime is concerned? The man who aids and abets in a murder is just as much a murderer as if he actually committed the crime.

Why should he not be indicted as such? No valid answer can be given in the negative is our opinion.

It is to be hoped that some Statesman in our General Assembly will rise to the occasion and pass a law like that which England has had for many years. Fixing forms for indictments in all cases. An indictment for murder in England is quite brief. After setting out the usual headings, it goes on. The Grand Jury upon their oaths present that A on the ..... day of ..... in the year ..... did kill and murder B ..... in the County of .....

Against the peace, etc.

Is any more necessary? The law fixes what is murder—the degree—and the proof required—of the Commonwealth and of the prisoner.

The same form—that is to say brief form—could be used in every offense. Why sustain a demurrer to an indictment because the word "feloniously" is left out, when the law fixes what is felonious and what is not, and the addition or omission of the word neither adds to nor subtracts from the actual value of the charge?

Demurrers—Motions to Quash, etc.

And another grave fault in our criminal practice is that which allows counsel for the accused to solemnly move to quash the writ summoning the Grand Jury—the writ of venire facias summoning the jury—to quash the panel and to demur to the indictment and assign no rea-

son—thus taking a chance—very welcome to a lazy lawyer to await the result of a trial and then find some trifling technicality which could have easily been amended without in any way prejudicing the prisoner and may yet under the strict ruling of the Courts compel a new trial after a long period of time has elapsed with a large expense entailed upon the Commonwealth. Why should not the grounds of any motion be required to be set out in writing or not to be considered? The other method is unfair to the judge trying the case—is an encouragement to laziness and to delay of the administration of justice, not to speak of the time and money wasted. In a recent case—a civil one it is true —*Dietz* v. *High*, decided September 22nd, instructions were excepted to on the ground that whilst they might have been correct as abstract propositions of law, they were improperly allowed and given to the jury.

The Court says, "This is not such an assignment of error as this Court will consider. If there were any reasons why the instructions were not proper, it was the duty of the party complaining to point them out." Is not this an excellent rule to apply to all exceptions?

Comity between the States —Fraud in Obtaining a Divorce in One State Does Not Debar Another State from Disregarding the Fraudulent Decree.

Our Supreme Court of Appeals in the case of *Corvin* v. *Commonwealth* renders an interesting decision in respect to the effect of a decree for divorce in another State, obtained by fraud, upon a prosecution for bigamy in this State.

Corvin was indicted for bigamy in Wythe County. He married in that County in 1903. On account of his misconduct with his wife's sister-in-law, his wife left in 1916, after a veiled threat that she had better do so. He was indicted in 1917 for unlawfully and without just cause deserting, etc., his wife, she being in destitute and necessitous circumstances. He was found guilty and put on probation. He left the State and afterwards obtained a divorce in West Virginia on the ground that his wife had deserted him in December, 1915—the suit being brought

May 9th, 1919. The fact was the separation between himself and his wife—the so-called desertion—did not take place until December 3rd, 1916—three years being in West Virginia, the period for which a divorce may be granted for desertion, as in this State. He proved his case by himself and his mistress—the sister-in-law—whom he subsequently married—her husband having divorced her for her misconduct with Corvin. It was claimed by Corvin in defense of the indictment that the divorce decree obtained in West Virginia was a perfect defense in the prosecution both under the full faith and credit claim of the Federal Constitution, and because of the comity which should exist between the States and the respect due by one State to the judicial proceedings of another. Our Court after discussing very fully various cases from several States in the Union baring on the question very properly held that where fraud was shown in the obtaining of the divorce in West Virginia—as was established beyond doubt—the fact of this divorce, so obtained was no defense to the indictment and sustained Corvin's conviction.

The Oldest Law Book and References Thereto.

At one time in the memory of the writer no book was ottener quoted in argument before a jury either by way of illustration or as an aid in argument, than the Bible—which is certainly the oldest Law Book familiarly known to Christian and Jewish People. It is seldom referred to now, more's the pity—for it indicates that it is not in familiar use either by the Bar or jurymen.

Indeed there is great complaint now-a-days that the reading and study of the Bible has become a thing of the past, a thing to be regretted if for no other reason than its magnificent English and the wealth of poetry and legend. The venerable John B. Minor used to advise all of his law students to study the Bible and Shakespeare—excellent advice now and always. In the good old days when the average juryman read the Bible and some of them little else, a quotation or illustration therefrom caught at once the attention of the jury. It is refreshing, and we say this in all seriousness, to find our highest Court drawing il-

lustrations from this great book—great in any way you regard it. In the case mentioned above Judge Prentis in delivering the opinion of the Court, alludes, as illustrating the gravity of the crime and the surety of the condemnation now as in old days, to 25th Numbers, the fact of Zimri's punishment when he defiantly brought a Midianitish woman into the Hebrew Camp in the sight of Moses and the congregation before the door of the tabernacle.

"Back to the Constitution" School.

In an address formally opening at the College of William and Mary the Marshall-Wythe School of Government and Citizenship as a leader in a "Back-to-the-Constitution" movement, Judge Alton B. Parker, of New York, on January 14th, declared that the colleges and high schools of America must teach thoroughly the principles as well as the history of our constitutional government. There is no other way, he said, of eliminating the dangers to government growing out of ignorance and malicious propaganda. Parts of the address are published in this number of the LAW REGISTER.

The Marshall-Wythe School, is a memorial to Chief Justice John Marshall, the expounder of the Constitution, and his teacher, George Wythe, the first professor of law in America. Marshall studied law under Wythe at William and Mary. Its opening marked the first movement in America by an institution, engaged in producing large numbers of teachers for the public schools, to equip its graduates to educate their pupils in the obligations and advantages of American citizenship.